

## REMARKS

### I. Introduction

Receipt is acknowledged of a final Office Action dated October 20, 2004. In the action claims 40, 41, 46, 47, 52-54 and 105-110 were rejected as allegedly containing new matter, and claims 40, 46, 47, 52, 53 and 107-110 were rejected as allegedly anticipated by Yoshimura *et al.*, FEBS Letters, 244:487 (1989) (“Yoshimura”). The title was also objected to as allegedly not descriptive.

### II. Status of the Claims

In this response applicants amended claims 40, 52, 107 and 108. The present amendment does not necessitate a further search and generally accommodates the examiner’s concerns made in the outstanding office action. Accordingly, applicants respectfully request entry of the amendment and reconsideration of the present rejections in light of the following remarks. Upon entry of this amendment, 40, 41, 46, 47, 52-54 and 105-110 will be under examination.

### III. New Matter Rejection Under 35 U.S.C. § 112, First Paragraph

Claims 40, 41, 46, 47, 52-54 and 105-110 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly containing new matter. In particular, the claims were rejected because “variants directed to the insertion or deletion of 1-5 amino acids as compared to SEQ ID NO: 2 wherein specifically the variant has chemotactic activity . . . is reiterated and maintained from the previous office action, . . . with the new issue equivalent to the previous claim wording.” Office action at 3. Applicants respectfully traverse this ground for rejection.

Support for variants comprising “an insertion or deletion of 1-5 amino acids as compared to SEQ ID NO:2” can be found in the specification at 7, first full paragraph. In fact, the application specifically provides that “[i]nsertions’ or ‘deletions’ are typically in the range of about 1 to 5 amino acids.” Specification at 7, lines 6-7. In the interest of expediting prosecution, claim 52 has been amended to more clearly recite this language.

In addition, applicants amended claim 40 to recite polynucleotides encoding the variant if SEQ ID NO: 2 “shares at least 95% sequence identity with SEQ ID NO: 2.” This amendment is implicitly supported in the specification at 7, first full paragraph, since the specification explicitly states that the polypeptides of the present invention may comprise an insertion or deletion of 1 to 5 amino acids. Assuming applicants change 1 to 5 amino acids in SEQ ID NO: 2, the modified sequence would share approximately 95% to 100% sequence identity with SEQ ID NO: 2. Accordingly, withdrawal of this ground for rejection is respectfully requested.

#### **IV. Lack of Novelty Rejection Under 35 U.S.C. § 102(b)**

Claims 40, 46, 47, 52, 53 and 107-110 were rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Yoshimura. In particular, the claims were rejected because the Yoshimura allegedly discloses fragments of SEQ ID NO: 2 as claimed in the present invention. Applicants respectfully traverse this ground for rejection.

Without acquiescing to the examiner’s rejection, and in the interest of expediting prosecution, applicants amended the claims to recite that the polynucleotide of the present invention encodes a variant of SEQ ID NO: 2 that shares at least 95% identity to SEQ ID NO: 2, encodes biologic and immunogenic fragments of SEQ ID NO: 2, or encodes SEQ ID NO: 2 consisting essentially of an insertion or deletion consisting of about 1 to 5 amino acids compared to SEQ ID NO: 2. The sequence disclosed in the referenced publication does not share at least 95% sequence identity with SEQ ID NO: 2 or consist essentially of an insertion or deletion consisting of about 1 to 5 amino acids compared to SEQ ID NO: 2. Therefore, Yoshimura does not anticipate the claimed invention.

For at least these reasons, applicants respectfully assert that the present application is in condition for allowance and that the outstanding rejections be withdrawn.

## CONCLUSION

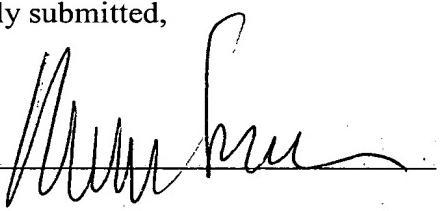
Reconsideration of the present application in view of the foregoing amendments and arguments is kindly requested.

It is respectfully urged that the present application is now in condition for allowance. Early notice to that effect is earnestly solicited.

Examiner Marschel is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted,

By \_\_\_\_\_

  
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